

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/nk
April 18, 2019

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IN RE:

ISLANDE SIMON
AKA ISLANDE NOEL
AKA ISLANDE N. SIMON,

Chapter 13
Case No: 8-18-74533-las

Debtor.
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**AFFIRMATION IN OPPOSITION TO DEBTOR'S MOTION
TO MODIFY THE CONFIRMED PLAN**

NATHAN Z. KAUFMAN, ESQ., the undersigned, affirms the following under the penalty of perjury:

1. I am staff attorney for Marianne DeRosa, Esq., the Chapter 13 Trustee (the "Trustee") of this case and as such am fully familiar with the facts and circumstances set forth herein.

2. This Affirmation is submitted in opposition to the motion of Debtor pursuant to 11 U.S.C. §1329, filed February 14, 2019 as docket number 25 and amended April 10, 2019 at docket number 30 (hereinafter the "Motion").

3. As a threshold matter, the Trustee notes that service of the amended motion papers, including the proposed modified plan, was made April 10, 2019. This is only eight days prior to the previously noticed date of April 18, 2019. There is therefore insufficient notice pursuant to Fed. R. Bankr. P. 2002(a)(5) and (a)(9) and 3015(h). The Trustee respectfully submits that the hearing on the Motion should be adjourned to a date at least 21 days from April 10, 2019.

4. The plan currently effective in this case was filed September 18, 2018 at docket number 20 (the "Confirmed Plan") and confirmed by Order dated September 25, 2018. The Confirmed Plan provides for 100% distribution to all creditors. The current monthly payment due under the Confirmed Plan is \$1,100.00, increasing to \$1,170.00 in August 2019.

5. After confirmation, a proof of claim was timely filed for the U.S. Department of Education, Claim 15 on the Claims Register ("Claim 15"), rendering the Confirmed Plan infeasible.

6. Debtor initially filed the Motion seeking to separately classify Claim 15. However, based upon documentation Debtor provided to the Trustee, Debtor was not current pre-petition

with the debt obligation underlying Claim 15. Claim 15 therefore does not qualify for maintenance treatment under 11 U.S.C. §1322(b)(5) or discrimination under 11 U.S.C. §1322(b)(1), and therefore must receive the same treatment as other nonpriority unsecured creditors pursuant 11 U.S.C. §1322(a)(3). Debtor amended the Motion to seek approval of a pro rata plan for this reason. The proposed modified plan maintains the same payment schedule as the Confirmed Plan.

7. The Trustee objects for two reasons.

a. The Trustee has requested documentation to perform a liquidation analysis under 11 U.S.C. §1322(a)(4). This documentation was not provided to the Trustee prior to confirmation because the Confirmed Plan provides for 100% distribution to all creditors. The requested documentation that remains outstanding includes a home appraisal, two motor vehicle valuations, and a statement for the Debtor's Chase checking account x9685. The Trustee objects because she cannot determine whether the proposed modified plan satisfies 11 U.S.C. §1322(a)(4).

b. Under the proposed modified plan, the Debtor would be required to turn over her 2018 federal and state tax returns on or before April 15, 2019. Debtor has not done so, and is therefore in default under the proposed modified plan.

WHEREFORE, based upon the foregoing and in the interests of justice and fairness to all parties, it is respectfully requested that the Debtor's Motion be denied without prejudice, and the Court grant such other and further relief as the Court deems just and proper.

Dated: Jericho, New York
April 16, 2019

s/ Nathan Z. Kaufman
Nathan Z. Kaufman, Staff Attorney
Marianne DeRosa, Chapter 13 Trustee
100 Jericho Quadrangle, Ste. 127
Jericho, NY 11753
(516) 622-1340

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CERTIFICATE OF SERVICE
BY MAIL

Debtor.

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This is to certify that I, Nathan Z. Kaufman, have this day served a true, accurate and correct copy of the within Affirmation in Opposition by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Islande Simon
212 Bergen Court
Copiague, NY 11726

Cooper J Macco, Esq.
Macco & Corey, P.C.
2950 Express Drive South, Suite 109
Islandia, NY 11749

Davidson Fink LLP
28 E Main St, Ste 1700
Rochester, NY 14614

This April 16, 2019

/s/Nathan Z. Kaufman
Nathan Z. Kaufman, Staff Attorney
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
125 Jericho Tpk., Ste. 105
Jericho, NY 11753
(516) 622-1340

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MARIANNE DeROSA, TRUSTEE
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